



The Impossibility of Implementing the Commercial Supply Contract in Light of the Corona Pandemic

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Abstract

The supply contract is subject as a general asset to the general law, but may be subject to the private law based on the nature, character, and subject matter of the contracting persons; We have examined the concept of a commercial supply contract, which is subject to private law and its features, and obstacles to its implementation in the context of the Corona pandemic. The theories that always give rise to confusion and problems in the field of contracts are the theory of emergency circumstances and their similarity to force majeure, which has an impact on the duration of the contract, and we indicate what it is to resort to them and the situation of the Iraqi legislator. The legal adaptation of the non-performance of the contract under the Corona Pandemic, in which the Corona Pandemic was considered a force majeure, interrupted the performance of the contract for a period of time or led to a failure to perform. Also, we have addressed what are the legal solutions under the general principles of law as well as the legislative provision in Iraq. We have reached several conclusions, including that the supply contract is canceled by law if it is subjected to force majeure. Furthermore, we have made several recommendations that we hope the Iraqi legislator takes care of, including the addition of the supply contract as part of commercial contracts that are fast and credit.

Keywords

impossibility of implementation, a contract, commercial supply, Corona pandemic

JEL Classifications: J11, F43

1. Introduction

Commercial contracts are varied and different in content, manner of contract, and execution, including the supply contract, which may be concluded in

different ways and contents depending on the nature of the contracting persons and the subject matter of the contract.

Contracts sometimes reach semi-closed routes because they cannot be performed because of an emergency or force majeure that prevents the obligation holder from performing its obligations, one of the new developments on the world stage is the Corona pandemic. We're going to model the supply contract because it's impossible to do with this pandemic.

The study aims to explain the delay in implementation of contracts in general and the supply contract in particular due to the new Corona pandemic. From commercial or civil contracts, what is the difference between a supply contract and a compliance contract, then defining the Corona pandemic and classifying it as a pandemic as a force majeure, or is it calculated on emergency conditions, and is it impossible to implement the contract in light of the pandemic and leads to its annulment?

2. Concept of a Commercial Supply Contract

The supply contract is a product of modern-day commercial contracts and the resulting industrial development in quantitative and qualitative production, the development of transport, the preservation and security of goods, the development of telephone and electronic means of communication, and the establishment of various economic institutions. It has created trade climates, financial, and economic contracts that are quite different from trade in the past centuries. According to the key elements of the contract, the supply contract could be defined in its commercial sense as:

Bringing goods from outside the country's political borders to those wishing to do so. It is handled by a specialized office with extensive expertise in the location and sources of goods, which makes contracts within their own country with willing traders who do this either as agents of factories and offshore companies around the world or represent the first party (seller) of the contract and the local traders (buyers) of another second party. The concept of a trade supply contract will be reflected in two requests as follows:

3. What a Commercial Supply Contract

A supply contract is a contract under which a person undertakes to deliver certain goods or services periodically or in an organization within a certain period of time to another person in exchange for an amount (Mahmoud, 2020). The statement of what we are going to deal with in two sections is as follows:

4. Definition of a Commercial Supply Contract

A supply contract (Mahmoud, 2020) from commercial and civil contracts whereby the parties to the contract are private companies or enterprises or

represent their names in their personal capacity and in the private rather than public interest [Al-Alusi \(2017\)](#) (Legal Terms, 1973).

The supply contract is:

A contract whereby the supplier is required to hand over to the supplier certain items of the subject matter of the contract at predetermined intervals and also a predetermined amount that may be paid in full for one time or as usual in the form of installments so that each installment is paid upon delivery of each part of the agreement (whether goods or services) (Abu Suleiman, 1994).

The contract of supply was defined in its commercial sense as:

A contract in which the trader or manufacturer is obliged to supply or provide to the employer periodically, goods or services of his or her production or other production with specifications agreed between the parties in specified quantities and at specified times, to be delivered to the employer or his or her deputy at the workplace, unless otherwise agreed, in exchange for a price or remuneration paid by the employer at specified intervals or at the end of the contract (<https://www.alsaadiadvocates.com>). Not only is this contract required to supply goods, but it may also be services or the provision of labour generated, or scientific competencies in rare jurisdictions, and the use of the term seller is the supplier, and the buyer is its supplier.

5. Characteristics of the Commercial Supply Contract

The supply contract has several characteristics:

1. Consensual contract

That is through the offer and acceptance of the parties to the contract, which is not formal and therefore not required to be written, and if achieved, only until the contract is proved ([Al-Hakim, 1980](#); [Al-Sharif, 1982](#); [Ali, 1946](#)).

2. Netting Contract

When a supplier gives, he expects a fee in return, it gives one of the parties to the contract without taking it in front and this is called a donation contract ([Abdel-RA, 1958](#); [Abu Suleiman, 1994](#); [Sharif, 2016](#)).

The supply contract is also a speculative contract, as both parties to the contract have a profit objective ([Al-Alusi, 2017](#); [Al-Farzawi, 1978](#); [Aziz, 2008](#)).

3. Specific Contract

The specific contract, in which the obligations and rights of the parties are determined in the course of the contract, even if they are unequal, is the supply contract from the specified contract rather than the probability contract, which means that the probability of a contract occurring is dependent on the amount provided by the other party and does not require equivalence and equivalence between the parties ([Daraghmeh, 2004](#); [Hamid, 2002](#); [Thnoon, 2008](#)), but maybe close to it in order to prevent obscenity. An example of a possible contract is an insurance contract where the insurer pays insurance premiums to the insurer on the possibility of paying financial compensation in case of an accident or risk ([A. Hassan, 1976](#); [Q Hassan, 2001](#); [Q Hassan, 2002](#)).

4. Extended Contract

The essential element of the contract of supply is time, because it may extend to long or short-term periods depending on the type of agreement, and the contract of supply is not the only contract that extends continuously similar to that of the lease and is different from immediate contracts whose effects are acquired as soon as the contract is concluded or which are performed directly and ([Abdel-RA, 1958](#)), i.e. do not require successive periods of time ([Hussein, 1949, 1977](#); [Qader, 1999](#))

5. A binding contract for both sides

Each party to the contract has an obligation on the other party to become a creditor and debtor to the other. The supplier is obliged to supply the contracted item to its supplier. The latter is obliged to pay the supplier's dues, as stipulated by the Iraqi legislature: "Irrespective of the location of the contract to which the contractor is responding, the contractor is obliged to perform its obligations" ([Muhammad, 2020](#); [Munther, 1992](#)) .

Iraqi law provided that: "If the performance of the contract is necessary and one of the contractors may not refer to it or modify it except by law or by mutual agreement (Article 146/1 of the Iraqi Civil Code No. 40 of 1951)

6. Nominate Contract

The Iraqi legislator has not regulated the supply contract by its own legal rules, and consequently, the supply contract is governed by the general provisions of the contracts in the Iraqi Civil Code, in accordance with article 76/1 "The general rules of this chapter shall apply to contracts of which they are named and which are not named" ([Qader, 1999](#); [Rahim, 1979](#); [Solomon, 1992](#)). It differs from the so-called contracts mentioned by law in provisions that are unique to other contracts.

The Iraqi Civil Code provides that:

"The rules unique to certain civil contracts are determined by the provisions of their chapters, and trade laws determine the rules for commercial contracts" ([Munther, 1992](#); [Sharif, 2016](#); [Suleiman, 2006](#)).

6. Legal Adaptation of The Commercial Supply Contract

There is disagreement as to the adjustment of the supply contract as to whether it prepares civil or commercial contracts? And what if it's a contract of obedience or bargaining? We will therefore address this disagreement in two sections as follows:

7. Contract of Supply from Civil or Commercial Contracts

The term supply as a business is included in the Iraqi Trade Act "First: The following acts shall be considered a business if they are for-profit and shall be presumed to have such intent unless proved otherwise. Second: The supply of goods and services... " (Article 5 of the Iraqi Trade Law No. 30 of 1984). We can

consider that the contract of supply is one of the current contracts for the supply of goods as one of the business practices of the dealer for profit, whereas the Civil Code of Iraq does not mention the contract of supply as one of the so-called contracts contained in second Book thereof.

The most important thing that distinguishes supply as commercial from civilian is credit and speed, which is required by the business, while these two elements that may be of interest in civil business, credit, and speed do not have implications for the nature of the business governed by special controls that do not apply to other businesses ([Aziz, 2008](#); [Qader, 1999](#); [Suleiman, 2006](#)).

The researcher supports the fact that the contract of supply of commercial contracts based on Iraqi trade law, which included supply, is among the businesses with a predominantly physical profit, whether in the short or long term, as well as the business requirements for prior financial credit, speed and time, which is at the heart of the supply contract (time factor) which requires accurate delivery of the object in question as well as prompt payment to the supplier ([Thnoon, 2008](#)).

There are three conditions for a supply contract to be considered a business

1. There's to be a purchase.
2. This purchase should respond to a mover.
3. Such a purchase is for resale or lease (Daraghmeh, 2004).

8. The Contract of Supply is a Contract of Obedience or Bargaining

The contract of obedience may be defined as the superiority of the will of one party over the other. Such will shall be free to act on its own will without the will of the other party to the contract. Normally, it is not the consent of a particular person but an unspecified number of persons (Al-Alusi, 2017).

It is clear that a performance contract is a will (offer and acceptance), but the offeror acts under the law by his or her own will in the contract and imposes his or her terms on the offeror, who can only obey the offeror's terms. An example is an application for electricity or water service where the applicant does not have the right to discuss the General Annex at terms or prices until it is obtained. This type of handling of utilities is therefore of interest to all individuals and is not targeted at a particular segment (Al-Alusi, 2017).

The Iraqi legislator regulated the Civil Code's compliance contract by stating:

"Acceptance of performance contracts is limited to mere recognition of a draft contract with a scheduled regime drawn up by the offeror and not to the discussion" (Article 167/1 of the Iraqi Civil Code No. 40 of 1951).

The hallmarks of the obedience contract are:

1. The strongest party is the positive that can impose its terms.
2. The place of the necklace is a necessary life requirement.
3. The terms of the contract do not distinguish between one person and another (Al-Hakim et al., 2018, pg. 60).

According to the above, we conclude that the supply contract is different from the performance contract in terms of the equality of the parties to the contract in the legal centers as well as the right of each party to set and discuss appropriate conditions for it. It can only be regarded as a bargaining contract if the contract is with a public legal person and is therefore considered an administrative supply contract and subject to specific conditions and controls different from the commercial supply contract. A supply contract may be concluded by the public administration not as a person of public law but in person and thus subject to the rules of private law.

9. The Corona Pandemic Has Affected the Implementation of Nodal Commitments

The Corona pandemic (<https://www.who.int>) has affected all the joints of life in various countries of the world, including the impact on contractual obligations between individuals and companies and the inability to implement them. The legal adaptation of the pandemic, its impact on the implementation of the supply contract, and the consequences of the failure to implement the supply contract due to the Corona pandemic in two cases will therefore be addressed as follows:

9.1 Legal Adaptation of The Corona Pandemic

The World Health Organization (WHO), as a result of the corona-1999 outbreak, declared it a global transboundary pandemic. Consequently, some, if not most, states have declared a state of emergency that has disrupted life in various countries of the world and has resulted in the inability to fulfill contractual obligations that have been forced under force majeure and emergency conditions. The Corona pandemic, according to the legal perspective, is too short of the will of contractors to be expected or paid (<https://lusailnews.net>). The distinction between force majeure and emergency theory and their terms and effect on the implementation of the supply contract must be explained. Then, we describe the similarities and differences between them in two sections as follows:

9.2 The Distinction Between Emergency Conditions and Force Majeure

The emergency theory is defined as an accidental and sudden incident occurring at the time of the performance of the contract with which the debtor has no connection or knowledge at the time of the agreement that makes the performance of the obligation burdensome for the debtor, which may cause significant loss, but the performance of the obligation will not be impossible (Al-Sharif, 1982).

From the concept of emergency theory, it can be concluded that the Iraqi legislator referred to them as exceptional incidents "but that if there were general exceptional incidents that could not have been expected, the result would be that the implementation of the contractual obligation, while not becoming impossible,

would be so stressful for the debtor that it would threaten it with a heavy loss (Article 146/1 of the Iraqi Civil Code No. 40 of 1951).

From an analysis of the previous legal text, it can be concluded that the Iraqi legislator has set several conditions if all of them are met, the theory of emergency circumstances may be applied:

1. A clause relating to the nature of the contract: (Is the contract prompt or is its execution dependent on yes). Examples are leases and contracts of supply, the implementation of which extends to future periods of time (Al-Hakim&Al-Bakri, 1980).

2. A condition relating to the nature of an accident or circumstance, which occurs after and before or during the contract is signed and is a sudden event involving the general public (Athnoon, 1976), such as natural disasters or the spread of diseases such as the Corona epidemic.

3. The emergency circumstance is unexpected during the signing of the contract and cannot be avoided. If this circumstance can be avoided, the situation becomes normal and not an emergency. As the Iraqi legislator emphasized in the above-mentioned legal text, the obligation is not impossible but is burdensome for the debtor.

Force majeure has been called by some scholars as to the singularity of impossibility, which means that one or both parties to the contract are unable to fulfill their obligations under compelling circumstances, in which case the impossibility is absolute rather than relative, and is the result of force majeure (Al-Jabour, 2002, which is the cause of the impossibility of performance (Ahmed, 2006).

The original Iraqi legislator's position is that the contract is binding on both sides. Force majeure is contained in two of the first legal articles, in which the term force majeure is not explicitly mentioned as one of the reasons for the impossibility of performing a contract because of the nature of the impossibility under force majeure, but this is implied since it is mentioned in the default liability (contract guarantee):

"If it is impossible for the contractor of the contract to perform the obligation in kind, he or she is sentenced to compensation for failure to perform his or her obligation unless it is established that the impossibility of performance arose from a foreign cause in which he or she has no interest" (Article 168 of the Iraqi Civil Law No. 40 of 1951). However, he mentioned force majeure as one of the reasons that could only be compensated if there was an agreement to do so:

"If the person proves that the damage was caused by a foreign cause in which there is no sufficient celestial cause, sudden accident, force majeure, the act of a third party or the fault of the injured person, he is not bound by the security unless there is provision or agreement to the contrary"(Article 211 of the Iraqi Civil Law No. 40 of 1951).

Through a review of previous legal texts, the following can be inferred:

1. Force majeure is not the action of the debtor but an external event beyond its control and if it is established that the debtor has a hand in the event, the debtor must be compensated.

2. Where the debtor has no involvement in this compelling event, it is also understood not to have knowledge of it at the time of the contract. The Court can assess this by examining each case individually, i.e., the criterion of judgment is objective depending on the circumstances of each case (Al-Farzawi, 1979, p. 537).

3. This force majeure or a violent event, the obligation is impossible and not a relative impossibility (Al-Mawla, 1991, pp. 230-234).

An example of force majeure, which is the subject of our research into the spread of the Covid - 19 epidemic, has forced the entire world to close its borders and not to communicate with the outside world under any circumstances. Entire countries have been isolated and affected areas have been isolated in order to preserve public safety. This led to global economic paralysis and the bankruptcy of many global companies, which made it impossible for the debtor to perform the contract and its obligation. This is supported by the decision of the Crisis Committee and the Public Health and Safety Commission of Iraq to consider the times of the Corona pandemic as force majeure, at its 22-25 March meeting "The Coronavirus crisis period is a force majeure for all projects and decades from 20 February 2020" (<https://gds.gov.iq>).

10. Similarities Between Emergency Theory and Force Majeure

1. Similarities between emergency theory and force majeure:

A. In the Civil Code, the Iraqi legislator noted that emergency circumstances were exceptional, and force majeure spoke of a foreign cause and a sudden incident. So, the conditions are almost the same: the will of the debtor does not interfere with this unpredictable bar.

B. Force majeure or emergency circumstances before or during the performance of the contract (important to be after the signing of the agreement) making the debtor's obligation cumbersome or impossible.

C. Administrative jurisdiction was the race to adapt these circumstances and formulate them in the form of theories, which were then translated into legal texts applicable in case of emergency and force majeure, so it can be said that force majeure and the theory of emergency circumstances originated in the judiciary. (Al-Sharif, 1982).

2. Differences between emergency theory and force majeure:

A. Emergency theory is applied within the limits and framework of the contract, and force majeure is applied within the framework of nodal and tort liability. The debtor may be relieved of default liability under the compelling circumstance because its first obligation is the contract, and therefore the contractual liability (Thnoon, 2008).

B. The Iraqi legislature has taken the theory of emergency circumstances as one of the general rules of law that must not be violated (Amer, 1949). The Iraqi

Civil Code stipulates that: "The Court may, after balancing the interest of the parties, reverse the onerous obligation reasonably if the justice so requires, and every agreement to the contrary shall be invalid") Article 146/2 of the Iraqi Civil Code No. 40 of 1951). In contrast, to force majeure, which has not returned it from public order, and thus allows the parties to set whatever conditions they wish, as long as it does not violate the law, even if the contract cannot be executed, the Iraqi Civil Code in article 211 provides that:

"If the person proves that the damage was caused by a foreign cause in which there is no divine cause, sudden accident, force majeure, the act of a third party or the fault of the injured person, it is not bound by the security unless there is provision or agreement to the contrary".

C. Force majeure has the effect of not holding the debtor accountable for civil liability (Article 122 of the Iraqi Civil Code No. 40 of 1951). The legislator also requires that all periods of time be suspended and proceedings taken are not legally valid (Articles 84 and 174 of the Iraqi Civil Procedure Code No. 83 of 1969). As to the effect of emergency circumstances, the judge may mitigate the obligations on the debtor to the extent possible and strike a balance between the parties to the contract (Article 146/2 of the Iraqi Civil Code No. 40 of 1951).

D. Force majeure by law must be proved by the debtor and its liability abandoned for the impossibility of performing the obligation (Bani Ahmed, 2006 AD, p. 8). As to the theory of emergency circumstances, the contract remains in place with its obligations, but the judge tries to alleviate the fatigue in which the debtor falls as a result of an impeccable emergency (Effendi, 1991, pp. 233-237).

10.1 The Consequences of the Failure to Execute the Supply Contract Due to the Corona Pandemic

Original presumption of good faith at the parties to the contract, performance of their obligations to each other but supply contract (With the essential element of time) like all other contracts, the implementation may be hampered and there is a range of obstacles. (Such as emergency conditions, which are very similar to force majeure, as above) Faced with the parties to the contract in order to fulfill their obligations to the other party, the researcher proceeded to take force majeure as a reason not to perform the liabilities of both the debtor and the creditor in the supply contract. The most compelling force to which the world is exposed is the Corona pandemic, which caused an economic recession, the cessation of global trade, and the subsequent impossibility of performing contracts, including the supply contract in question and its effects. We will therefore address the impossibility of implementation and avoidance in two sections as follows:

10.2 The Impossibility of Performing the Supply Contract

In basic, the obligation (in the form of a contract) is invalidated if it is impossible. This is what the Iraqi legislature choose. The Civil Code states that:

"If the place of obligation is impossible, the contract is invalid"(Article 127/1 of the Iraqi Civil Code No. 40 of 1951). Also, if only one aspect of the contract is impossible, namely the debtor, and the impossibility is absolute for the performance of its liabilities, the debtor must be compensated (Al-Fadl, 1992, pp. 295-296) It further states that:

"If it is impossible for the debtor without the impossibility itself being absolute, the contract is correct and the debtor is obliged to compensate for failure to fulfill its obligation". (Article 127/2 of the Iraqi Civil Code No. 40 of 1951). Through the general rules of law and the provision of article 127 of the Iraqi Civil Code, it is possible to determine what conditions must be provided for the impossibility of performing the supply contract:

1. The business corner of the supply contract is otherwise verifiable. The contract is considered invalid and produces no legal effect.
2. The terms of force majeure and the principle of absolute impossibility exist and the supplier (debtor) cannot perform the performance of the contract, and in a relative case, the impossibility is not considered to cause the contract to expire.
3. The impossibility arises from a reason beyond the debtor's control.

Force majeure and the attendant difficult and impossible circumstances associated with the performance of the contract lead us to look at this power and its expiration date, which can be continuous for the duration of time or may cease to exist after a certain period. If such power leads to the impossibility of performance, we shall face avoidance of the contract and dissolution of the debtor's obligations. While if such power has a fixed duration to expire or if there are solutions and signs of détente, provided that the period of termination of such power is prior to the expiration of the contract or the agreed supply date, the force here may be regarded as a temporary force majeure, so there is no way to talk about avoidance of the contract and exemption of the debtor from its liability, but rather the contract is considered to be suspended until force majeure has ceased. This is where the impossibility of performance is temporary (Al-Tai, 2002).

The impossibility of performing a supply contract may result from total or partial impossibility:

1. Total or absolute impossibility: According to the Iraqi legislator, if the impossibility of performing the contract is caused by a foreign cause of which the debtor has no income, the debtor is free from its obligations. " Unless it is established that the impossibility of performance arises from a foreign cause in which it has no interest, as well as the provision if the obligation is delayed", as well as "the obligation expires if the debtor proves that performance is rendered impossible by a foreign cause in which it has no interest" (Article 168 and 425 of the Iraqi Civil Code No. 40 of 1951).
2. Partial impossibility: The supply contract may consist of several parts or supplements.

If part of the contract cannot be performed as a result of force majeure (such as the Corona pandemic), the debtor is relieved of the obligation only in the portion that was impossible to perform, and the judge has the discretion to evaluate the contract and the importance of the part of the contract that was executed as a result of force majeure (Amer, 1979: p. 265). Iraq has adopted several precautionary measures in the form of the resolutions of the Crisis Committee or the Public Health and Safety Commission, the composition of which was adopted by a decision of the Presidency of the Council of Ministers, in order to prevent the spread of the virus throughout the country. This Committee was approved at its meeting 16/3/2020 (A curfew was imposed in Baghdad from 17/3/2020 until 23/3/2020, and the governors are empowered to impose a curfew in their governorates, suspend flights for one week from 16/3/2020, and suspend movement between governorates (<https://gds.gov.iq>) This will continue depending on whether or not the pandemic develops. Under the internal or inter-provincial curfew, air traffic has ceased and the Corona pandemic is not known to have ended. This has made it impossible for the supply contract to be executed.

10.3 The Implications of the Impossibility of Implementation

Failure of the debtor to fulfill the obligation entails several sanctions, depending on the law governing the contract. With respect to the commercial supply contract, it is governed by Iraqi civil law (as we have stated previously and is not a so-called contract), the impossibility of performing the supply contract under the current circumstances results in the dissolution of the contract (avoidance). We have spoken in advance that the supply contract has an essential element of extended time; the effect on contracts for multiple periods of time is different from that of contracts for immediate performance; first, it affects the future because what has been implemented and cannot be recovered is called cancellation or termination. The second is that it has an impact on the past and cannot be reverted from it, which is called avoidance. The Iraqi legislator has not made any distinction in its texts between cancellation and avoidance and has dealt with them under one clause, the dissolution of the contract (Al-Hakim and others, 2018, p. 233). Avoidance is the termination of the contract either because of non-performance or failure to comply with the terms of the contract, or it may be the avoidance of the impossibility of performance (Athnoon, 1946: p. 140).

The contractors may agree not to resort to the courts to avoid the contract (whatever the reason for the avoidance, we will drop it here since the agreement was made that the contract could not be performed), but in any event, this does not prevent excuses from the other party unless it is expressly agreed (Sultan, 1987: p. 260). This is confirmed by the Iraqi legislator, who states:

"In contracts binding on the side if one contract fails to fulfill its obligations under the contract, the other contract may, after excuses, request avoidance with compensation if it has a condition that the court may consider the debtor to a time limit, and may reject the request for avoidance if the debtor has not fulfilled it in

short with respect to the obligation as a whole" (Article 177 of the Iraqi Civil Code No. 40 of 1951).

Excuses can be defined as the debtor's means to the creditor if it is not satisfied with the creditor's performance of its nodal liability, and the debtor must prove this with excuses (Al-Sharif, 1982, p. 289). Under the continuing internal (partial or total) curfew, as well as the unknown suspension of flights and cargo, the most recent decision of the Crisis Committee, which was issued at the time of its meeting 31/5/2020 "The extension of the total curfew in Iraq until 6 June 2020, allowing food, fruit, vegetables, ovens, and pharmacies to operate, while continuing to suspend domestic flights, as well as flights to and from Iraq, and directing the relevant authorities to strictly enforce the ban" (<https://gds.gov.iq>). These government actions (which continue until the completion of this research), aimed at preserving the lives of citizens, prevent the implementation of the supply contract leading to its dissolution.

It may be distinguished here as to whether the location of the contract at the supplier has been damaged or rendered useless, whether by an act of an actor or by nature. If the object placed on it at the seller (supplier) and rendered useless by its sale, the contract has by law been broken, and the value of what it has taken from the buyer (consumer) is refunded, Iraqi law provides that:

"If he perishes in netting while in the hands of his owner, the contract is broken, whether he perished by doing so or by force majeure, he must return the compensation that was captured to her" (Article 179/1 of the Iraqi Civil Code No. 40 of 1951).

In the event that the contract is still in the hands of the seller (supplier), either by storing the item on it or by the manner of its transport, and it is damaged and rendered useless, the supplier (seller) shall remain in the hands of the supplier (buyer) and no expenses shall be borne by the supplier. The Iraqi legislature has provided that:

"The sale, if it perishes in the seller's hands before the buyer captures it, is the seller's money and nothing to the buyer" (Article 179/2 of the Iraqi Civil Code No. 40 of 1951).

Force majeure derives its legal provisions from the rule of domestic legislation, and the occurrence of such power leads to either continuous or temporary impossibility, which disrupts the nodal balance due to the inability of a party to fulfill its obligations. Contracts of supply have an international character and are subject in their provisions to international trade rules and arbitration unless otherwise agreed by the parties to the contract (<https://www.hjc.iq>).

11. The Results

1. A trade supply contract is a mutually binding contract based on the time element until its implementation, which is in the form of installments for the supplier to supply the agreed contract elements, and for the supplier and its obligation to make outstanding payments.

2. The commercial supply contract is governed by private law based on the nature and character of the contracting persons in addition to the subject matter of the contract, which is a commercial contract because the supply process is a commercial operation and is reflected in the Iraqi trade law.

3. A commercial supply contract like the rest of a commercial contract (but not named) has several characteristics, the most important being that it is a period contract (extended) in addition to a contract of free will for both parties.

4. It cannot be considered that a contract of commercial supply is one of the contracts of obedience to its conclusion by two indefatigable means.

5. The Corona Pandemic is a force majeure that stops the performance of the contract for a period of time or results in a failure to perform, and this difference that distinguishes it from the theory of emergency circumstances that makes the performance of the obligation on the debtor (supplier) burdensome only.

6. We distinguished between partial impossibility and which, by law, the debtor (supplier) can be freed from its obligations in this part only, and the impossibility may be total.

12. Recommendations

1. The confusion with regard to the commercial supply contract as a civil or commercial contract, we recommend the Iraqi legislator either include the commercial supply contract in the series of contracts named in Book II of the Civil Code of Iraq No. 40 of 1951, as amended, and determine its controls and conditions in the case of the rest of the most traded contracts. The widespread use of unnamed contracts in people's dealings and the evolution of market goods and needs lead the legislator to single out provisions for this type of contract, shifting from unnamed to named contracts with their own legal rules, or including a commercial supply contract as one of the commercial contracts in Iraqi Commercial Code No. 30 of 1984. In particular, the law included the supply of goods and services as one of the actions of traders intending to make a profit in article 5/Second in order to resolve this argument and the researcher supports the second option.

2. We recommend that the Iraqi legislature include the word "pandemic" along with the divine scourge as one of the causes of force majeure in the article (211) of the Iraqi Civil Code.

3. In article 168 of the Civil Code, the Iraqi legislator was deemed to have achieved force majeure for a foreign reason in which he had no hand to commitment. If it achieves the contract, the contract will cancel and does not provide compensation, article 211 of the contract denies compensation but allows the agreement to do otherwise. It is a rule of fairness to balance the parties to a contract, especially in general compelling circumstances such as the Corona pandemic as an example. We recommend that the legislator consider force majeure to be one of the rules that may not be violated, such as emergency circumstances, and amend the text of article 211 concerning the agreement on howling.

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